



Handbook of Operating Procedures

Sexual Misconduct

Policy Number: 59

Subject:	Reporting of sexual misconduct, including sexual harassment and sexual assault. The university's notice of nondiscrimination can be found in <u>HOOP 183, Nondiscrimination, Anti-Harassment and Equal Opportunity</u> .	Responsible Office:	Office of the President; Office of the Senior Executive Vice President, Chief Operating and Financial Officer
Scope:	Members of the university community, including employees, students, residents and other trainees, visitors, volunteers (including faculty appointed without salary), contractors, vendors, consultants, and observers, as well as applicants for employment or admission.	Responsible Executive:	Vice Dean for Admissions and Student Affairs; Associate Vice President of Diversity and Equal Opportunity
Date Reviewed:	September 2015		

I. POLICY AND GENERAL STATEMENT

The University of Texas Health Science Center at Houston ("university") is committed to providing an academic environment free from discrimination, which includes all forms of sexual misconduct. Sexual misconduct will not be tolerated, and individuals who engage in such conduct will be subject to disciplinary action.

Title IX of the Education Amendments of 1972 prohibits discrimination based on sex in educational programs and activities that receive federal financial assistance. To ensure compliance with Title IX and other federal and state civil rights laws, the university has developed policies that prohibit sexual misconduct in all of its forms. These policies and the procedures to address alleged policy violations are applicable to all complaints or reports of sexual misconduct made by or against any member of the university community. These policies and procedures apply to conduct that affects the complainant's education or employment with the university regardless of where it occurs and regardless of the gender, gender identity, or sexual orientation of the complainant or the respondent.

The Vice Dean of Admissions and Student Affairs serves as the university's Title IX Coordinator. The Associate Vice President of Diversity and Equal Opportunity serves as the university's Deputy Title IX Coordinator. All activities related to prevention of sexual misconduct and responses to reports of sexual misconduct are jointly coordinated by the Title IX and Deputy Title IX Coordinators. These activities may include the following:

- Communicating information to all university constituents regarding the protections afforded by Title IX and the process to file complaints;

- Coordinating university training regarding Title IX;
- Reviewing all university policies and procedures, when applicable, to ensure institutional compliance with Title IX;
- Coordinating with other offices of the university to ensure that complaints are addressed promptly and equitably and that investigations are carried out in compliance with university policies;
- Directing remediation as appropriate; and
- Initiating and conducting Title IX administrative reviews and campus climate surveys to assess the safety risk to the university's environment based on a pattern of behavior and directing intervention measures, as appropriate.

For purposes of this policy, references to the "Title IX Coordinator" will encompass the efforts of the Title IX Coordinator as well as his or her designee(s).

Any member of the university community who participates in proceedings under this policy regarding a complaint, response and/or investigation may not disclose any information or documents related thereto unless required to do so by law or university policy and only after consultation with the Office of Legal Affairs.

II. DEFINITIONS

Consent: A voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity. Consent to one act does not imply consent to another. Past consent does not imply future consent. Consent to engage in sexual activity with one person does not imply consent to engage in sexual activity with another. Consent can be withdrawn at any time. Any expression of an unwillingness to engage in any instance of sexual activity establishes a presumptive lack of consent. Consent is not effective if it results from: (a) the use of physical force; (b) a threat of physical force; (c) intimidation, (d) coercion; (e) incapacitation or (f) any other factor that would eliminate an individual's ability to exercise his or her own free will to choose whether or not to engage in sexual activity.

A current or previous dating or sexual relationship, by itself, is not sufficient to constitute consent. Even in the context of a relationship, there must be a voluntary, mutually understandable agreement that clearly indicates a willingness to engage in each instance of sexual activity.

Hostile Environment: exists when sex-based harassment is sufficiently severe and pervasive to deny or limit the individual's ability to participate in or benefit from the university's programs or activities or an employee's terms and conditions of employment. A hostile environment can be created by anyone involved in the university community.

Other Trainees: Postdoctoral research fellows, clinical fellows, and visiting students participating in a university educational or training activity.

Preponderance of the Evidence: The greater weight of the credible evidence. Preponderance of the evidence is the standard for determining allegations of sexual misconduct under this policy. This standard is satisfied if the action is deemed more likely to have occurred than not based on the greater weight of the credible evidence.

Sexual Misconduct: A broad term encompassing a range of non-consensual activity or unwelcome sexual advances, requests for sexual favors or conduct of a sexual nature directed toward another individual. Sexual misconduct can be committed by men or women, strangers or acquaintances, and can occur between or among people of the same or opposite sex. The term includes:

- **Dating Violence:** Violence committed by a person who is or has been in a romantic or intimate relationship with the victim. The existence of such a relationship will be determined based on its length, type, and frequency of interaction of the persons involved. Dating violence includes physical or sexual abuse, or the threat of such abuse. It does not include acts covered under the definition of domestic (family) violence.
- **Domestic (Family) Violence:** Felony or misdemeanor crimes of violence committed by a current or former spouse or intimate partner of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse or intimate partner, by a person similarly situated to a spouse of the victim under the domestic or family violence

laws of the state of Texas, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the state of Texas.

- **Sexual Assault:** An offense that meets the definition of rape, fondling, incest, or statutory rape:
 - *Rape:* the penetration, no matter how slight, of the vagina or anus with any body part or object, or oral penetration by a sex organ of another person, without the consent of the victim.
 - *Fondling:* The touching of the private body parts of another person for the purpose of sexual gratification, without the consent of the victim, including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental incapacity.
 - *Incest:* Sexual intercourse between persons who are related to each other within the degrees wherein marriage is prohibited by law.
 - *Statutory Rape:* Sexual intercourse with a person who is under the statutory age of consent.
- **Sexual Harassment:** A form of sex discrimination that includes, but is not limited to, unwelcome sexual advances, requests for sexual favors, and/or conduct of a sexual nature when:
 - Submission to such conduct is made explicitly or implicitly a term or condition of an individual's employment, education, student status or participation in university programs or activities; or
 - Submission to or rejection of such conduct by an individual is used as a basis for decisions pertaining to an individual's employment, education, student status or participation in university programs or activities; or
 - Such conduct would be regarded by a reasonable person as so severe and pervasive as to create an intimidating, hostile or offensive environment that substantially interferes with an individual's work, education, student status or participation in university programs or activities.
- **Stalking:** a course of conduct directed at a specific person that would cause a reasonable person to fear for her, his, or others' safety, or to suffer substantial emotional distress.

III. PROCEDURE

The university encourages those who have experienced any form of sexual misconduct to report those offenses as soon as possible to the Title IX or Deputy Title IX Coordinator or Equal Opportunity Administrator as outlined in this policy. Delays in reporting can greatly limit the university's ability to stop the sexual misconduct, collect evidence, and/or take effective action against individuals or organizations accused of violating this policy.

Faculty, supervisors, administrators, university officials and Student Affairs Offices are required to report promptly to the Title IX Coordinator incidents of sexual misconduct that come to their attention. Faculty, supervisors, administrators, university officials and Student Affairs Offices should limit their interactions with the complainant regarding the reported incident while referring him or her to the appropriate resources. All other members of the university community who witness or are aware of suspected incidents of sexual misconduct should immediately report the incident as outlined in this policy. Such reports will be documented in writing by the Title IX Coordinator.

A. Reporting a Complaint

All incidents, reports, and complaints alleging that a member of the university community is a victim of sexual misconduct should be reported to the Title IX Coordinator at 713-500-2255 or to the Deputy Title IX Coordinator or the Equal Opportunity Administrator at 713-500-3131 or in person at UCT Suite 150. Complaints may also be reported via the Compliance hotline (1-888-472-9868) or [web report](#). Upon receipt, the recipient of the report will review and forward the report to the Title IX Coordinator.

If violence is occurring or the threat of violence is immediate, 911 should be called. The university encourages those who have experienced sexual assault, domestic violence, dating violence, or stalking to report the offense immediately to The University of Texas Police – Houston (UTP-H) by calling 713-792-7867 (713-792-STOP).

Additionally, members of the university community with protective or restraining orders relevant to a complaint are encouraged to provide a copy to UTP-H. If a complaint of sexual misconduct is made to UTP-H, UTP-H shall advise the complainant of his or her right to file a complaint under this policy.

Upon receipt of a complaint, the Title IX Coordinator will provide the complainant with a written notice containing information regarding:

- his or her rights and options under this policy;
- the importance of preserving evidence that may assist in proving that a criminal offense occurred or that may be helpful in obtaining a protective order;
- available resources, such as support services, health, and mental health services;
- how to request changes in academic, living, or working situations or other protective measures; and
- an explanation of the university's disciplinary procedures in cases of sexual misconduct.

Additional information can be found at <https://www.uth.edu/hr/department/equal-opportunity/index.htm>.

1. Confidentiality

Individuals wishing to remain anonymous may report an alleged violation of this policy in any manner; however, electing to remain anonymous will limit the university's ability to collect evidence, take remedial action or otherwise fully address the alleged violation.

The University has an obligation to maintain an environment free of sex discrimination, thus many University employees have mandatory reporting and response obligations and may not be able to honor a complainant's request for confidentiality. Complainants who want to discuss a complaint in confidence may contact a physical or mental health care professional, professional counselor, or pastoral counselor (including those who act in that role under the supervision of these individuals). Except as otherwise permitted or required by law, these professionals are prohibited by confidentiality laws from reporting any information about an incident to anyone, in any way that identifies the victim, without the victim's permission. Student treatment and counseling records maintained by UTHealth Student Health & Counseling Services may be disclosed without the student's consent if the disclosure meets one of the exceptions to FERPA's general consent requirement. See HOOP 129, Educational Records.

Individuals filing a complaint under this policy with any other faculty, supervisor, administrator, university official, or Student Affairs Office may also ask that the complaint be considered confidential; however, the circumstances of the complaint will determine whether the request can be honored. Faculty, supervisors, administrators, university officials and Student Affairs Offices who receive a report of sexual misconduct are obligated to disclose the report to the Title IX Coordinator. The university may need to act to maintain campus safety, and the Title IX Coordinator may elect to move forward with resolving the complaint, regardless of the complainant's request for confidentiality, the manner in which a complaint is received, or whether a complaint is received at all. However, the complainant is strongly encouraged to file a written complaint. If the Title IX Coordinator determines that a request for confidentiality cannot be granted, the complainant will be notified.

In the course of an investigation into a report or complaint, the university may share information only as necessary with people who have a legitimate need for that information and to fulfill the purposes of this policy and comply with applicable law. To the extent possible, the university will also protect the privacy of all parties involved in a report of sexual misconduct.

Confidential counseling services are available to all university employees, residents, and other trainees through the Office of Employee Assistance Programs at (713) 500-3327. Counseling services are available to students through Student Health and Counseling Services at (713) 500-5171.

2. Participation of Advocate or Assistant

During the complaint process, a complainant or respondent may be assisted by a person of his or her choosing; however, the person assisting may not examine witnesses or otherwise actively participate in meetings, proceedings or interviews.

3. Interim Measures

The Title IX Coordinator will work with the appropriate university office in determining what immediate and effective steps can be taken to end any sexual misconduct, prevent its recurrence, protect and minimize the burden for the parties, and/or ensure equal access to educational programs and activities when students, residents or other trainees are involved. This includes taking interim steps before, during, or after any investigation or disciplinary process, while protecting the rights of the involved parties. These interim steps may include, but are not limited to, no contact orders, modifying schedules or assignments, or suspension and bar from university property when it reasonably appears to the Title IX Coordinator that the continuing presence of one or more of the involved parties poses a potential danger to persons or property or a potential threat for disrupting any activity authorized by the university.

4. Concurrent Criminal or Civil Proceedings

In complaints involving potential criminal conduct, the Title IX Coordinator shall inform the complainant of his or her option to file a criminal complaint. Police and criminal or civil justice procedures, findings, or outcomes are not determinative of either these grievance procedures or university disciplinary procedures.

In extraordinary circumstances, law enforcement may request that the university temporarily suspend its investigation. The Title IX Coordinator will consider such a request and make a determination upon consultation with the Office of Legal Affairs. The university will nevertheless communicate with both the complainant and respondent regarding rights under this policy, procedural options, the status of the investigation, and the availability of interim measures.

B. Resolving a Complaint

Anyone who believes that he or she has been subject to sexual misconduct may immediately file a complaint. The Title IX Coordinator will conduct a preliminary assessment of the complaint to determine whether this policy applies and whether a formal investigation will commence or an informal resolution is possible. In cases where the respondent is not under the control of the university, a full investigation may not be possible. However, interim measures may still be taken to the extent possible.

1. Informal Resolution

If both the complainant and the respondent consent to informal resolution, it may be appropriate for certain complaints or reports alleging sexual harassment. The Title IX Coordinator may suggest informal resolution after review of the initial complaint. Complainants may also contact the Title IX Coordinator for assistance in resolving the complaint informally prior to filing a formal complaint. The informal resolution option is not permitted for cases involving sexual assault, dating violence, domestic violence or stalking.

If an informal resolution is reached, it will be documented in writing by the Title IX Coordinator and signed by the complainant and the respondent. Informal resolutions should be completed no later than 10 business days after the Title IX Coordinator receives a request for informal resolution or otherwise initiates the process. The Title IX Coordinator will notify any other appropriate university office of the resolution. The university may take action, including disciplinary measures, to ensure an environment free of sexual misconduct. If an informal resolution is not reached, the facts of the complaint as well as the failure to reach an informal resolution shall be documented by the Title IX Coordinator, who shall then initiate an investigation under the formal resolution process.

2. Formal Resolution

To initiate the formal resolution process, the complainant should submit a signed, written statement setting out the details of the conduct that is the subject of the complaint, including the complainant's name, and contact information; the name of the person directly responsible for the alleged violation; a detailed description of the conduct or event that is the basis of the alleged violation; the date(s) and location(s) of the occurrence(s); the resolution sought; the names of any witnesses to the occurrence(s); and any documents or information relevant to the complaint. Any supervisor, faculty member, administrator, university official or Student Affairs Office receiving a written or verbal complaint must immediately contact the Title IX Coordinator. If the complaint is not in writing, the Title IX Coordinator should prepare a statement of what he or she understands the complaint to be.

C. Procedures for Investigations of Alleged Sexual Misconduct

1. The Title IX Coordinator will appoint one or more individuals to handle investigations arising from a complaint related to this policy.
2. The respondent shall be provided notice of the complaint and a summary of the allegations and allowed 7 business days to respond in writing. Upon request, the complainant may obtain a summary of the respondent's written response, if any.
3. The complainant and the respondent may present any evidence believed to be relevant to the complaint.
4. Persons thought to have information relevant to the complaint will be interviewed, and these interviews will be documented. University community members have a duty to participate in these investigations. Any person who knowingly and intentionally interferes with an ongoing investigation under this policy will be subject to disciplinary action, up to and including termination or dismissal.
5. The investigation of a complaint will be concluded as soon as possible after receipt of the written complaint or other notice, unless a justification for the delay has been presented to, reviewed and approved in writing by the Title IX Coordinator.
6. Upon completion of the investigation, the appointed investigator(s) will issue a written report to the Title IX Coordinator. The report shall include a summary of the investigation and the facts discovered during the investigation.
7. The complainant and the respondent shall be informed concurrently in writing of the investigation's completion and be provided access and adequate time to review the report. If a complaint involves a student(s), the parties will receive this information as permitted by law. Each will have 7 business days from the date of receipt to submit written comments to the Title IX Coordinator.
8. Within 7 business days after the deadline for receipt of comments from the complainant and respondent, the Title IX Coordinator will review the report and will take one of the following actions based on a preponderance of the evidence: (1) require further investigation into the complaint; (2) issue a determination that the results of the completed investigation are inconclusive; or (3) issue a determination as to whether this policy was violated.

D. Disciplinary Actions

1. If the Title IX Coordinator determines that the sexual misconduct policy was violated, he or she will refer the matter to the appropriate administrator for disciplinary action in accordance with the applicable disciplinary procedures. Disciplinary actions may include, but are not limited to, written reprimands, the imposition of conditions, reassignment, suspension, probation, termination or dismissal.
2. Implementation of disciplinary action against employees will be handled in accordance with the applicable university policy and procedures, which may include HOOP 44, Faculty Reappointment and Non-Reappointment, HOOP 133, Faculty Termination, HOOP 153, Termination of Appointment: Administrative and Professional and/or HOOP 187, Discipline and Dismissal of Classified Employees.
3. Implementation of disciplinary action against a student will be handled in accordance with the university's student disciplinary procedures, as outlined in HOOP 186 Student Conduct and Discipline.
4. Both parties will receive equal opportunities in all aspects of the process including notices and advisor representation. Further, the standard of proof in determining the outcome will be the "preponderance of the evidence," as defined in this policy.
5. The complainant and the respondent will be provided simultaneous written notice of the result of any disciplinary proceedings (including the rationale for the decision and sanctions), applicable appeal procedures, any changes in the results and when the results become final.

E. Additional Remedies

In addition to sanctions that may be imposed pursuant to the appropriate disciplinary policy, the university may take appropriate action(s), including, but not limited, to those below:

1. Imposing sanctions against the respondent, including mandatory training attendance;
2. Ensuring the complainant and respondent do not share classes, working environments or extracurricular activities;
3. Providing comprehensive, holistic victim services including medical, counseling and academic support services (e.g., tutoring);
4. Providing the complainant extra time to complete or re-take a class or withdraw from a class without an academic or financial penalty;
5. Designating an individual specifically trained in providing trauma-informed comprehensive services to victims of sexual violence to be on call to assist victims whenever needed;
6. Conducting, in conjunction with university leaders, a university climate check to assess the effectiveness of efforts to ensure that the university is free from sexual misconduct, and using that information to inform future proactive steps that the university will take;

7. Providing targeted training for a group of students if, for example, the sexual misconduct created a hostile environment in a particular program, department or clinic. Bystander intervention and sexual misconduct prevention programs may be appropriate; and/or
8. Issuing policy statements or taking other steps to communicate clearly that the university does not tolerate sexual misconduct and will respond to any incidents and to any individual who reports such incidents.

F. Retaliation

Members of the university community who retaliate in any way against an individual who has brought a request for resolution or a complaint pursuant to this policy or against an individual who has participated in an investigation of a complaint are subject to disciplinary action up to and including termination or dismissal. Reports of retaliation shall be made to and investigated by the Office of Institutional Compliance. See HOOP 108, Protection from Retaliation.

G. Time Limits and Exceptions

Time limits specified in this policy may be extended for good cause by the Title IX Coordinator with written notice to the complainant and respondent of the extension and the reason for the extension.

H. False Statements

Any person who recklessly or knowingly and intentionally files a false complaint under this policy or makes false statements in the course of an investigation is subject to disciplinary action up to and including termination or dismissal.

I. Dissemination of Policy and Education

This policy will be made available to all members of the university community online and in appropriate publications. All incoming employees, students, residents, other trainees, and volunteers (including faculty appointed without salary) will be provided training on this policy as well as risk reduction and bystander intervention. This policy will be reviewed at least every two years.

The university will also annually provide notices to employees, students, residents, other trainees, and volunteers (including faculty appointed without salary) regarding this policy, conduct that could constitute a violation of this policy, and information about available resources, such as support services, health services and mental health services. UTP-H will receive training on sexual misconduct policy and procedures, including their obligation to advise complainants of their option to file a complaint under these procedures, as well as to file a criminal complaint.

The Title IX and Deputy Title IX Coordinators, investigators, and any others with authority over investigations or disciplinary proceedings involving sexual misconduct shall receive training each academic year about offenses, investigatory procedures, due process, and university policies related to sexual misconduct.

IV. CONTACTS

Margaret McNeese, M.D., Title IX Coordinator Vice Dean of Admissions and Student Affairs

713-500-2255

Deana Moylan, Deputy Title IX Coordinator Office of the Senior Executive Vice President, Chief Operating and Financial Officer

713-500-3131

The University of Texas Police - Houston (UTP-H)

713-792-2890

<https://www.utph.org/>